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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF ARIZONA**

17 United States of America,
18 Plaintiff/Respondent,
19 v.
20 Abdul Malik Abdul Kareem,
21 Defendant/Movant.

2:15-cr-00707-SRB

**DEFENSE REPLY RE MOTION TO
EXCEED PAGE LIMITATION RE
POST-HEARING MEMORANDUM**

22 The Government opposes the motion to exceed page limitation because it asserts
23 the issues have already been briefed, thus no need for the summary of the post-hearing
24 memo. The Government's approach all along has been to separate out individual late
25 disclosures and argue that each is insufficient to warrant a dismissal or new trial. That is
26 not the appropriate standard or method of review. The items are considered collectively
27 to determine if they establish "a 'reasonable probability' of prejudice when suppression
28

1 of the evidence ‘undermines confidence in the outcome of the trial.’” *United States v.*
2 *Kohring*, 637 F.3d 895, 903, (9th Cir. 2011) (citing *Kyles v. Whitley*, 514 U.S. 419, 434
3 (1995)). The post-hearing memo is intended as a supplement to address items not
4 addressed in the evidentiary hearing and put them in context.
5

6 Remember where we were with the Supplemental Motion for New Trial, Doc.
7 505, on June 11, 2018. That motion was based on comments at the trial of Erick Jamal
8 Hendrick tying Hendricks to the Garland attack and testimony of the undercover agent
9 named Jane. Since that motion we have discovered Jencks Act information on Jane that
10 showed he was concerned about Simpson in relation to the Garland contest. Then we
11 learned that the Government actually had information from Saabir Nurse’s cell phone and
12 passport. Then, at the trial of Wahid, we learned that the FBI would typically expend
13 vast resources to investigate a money transfer to a suspected terrorist and would pay
14 particular attention to the last persons to see an attack before a terrorist attack. Then we
15 learned that Dallas FBI was concerned enough about Simpson to reach out to Phoenix
16 FBI for pertinent information. Then we learned of a pole camera recording video of
17 comings and goings at Simpson’s apartment. Then we learned that the FBI has Simpson
18 under surveillance for the three months preceding the attack, and even watched him round
19 the clock in relation to the Pat Tillman Run because it considered him a sufficient threat
20 that it warranted 16 agents devoted to that surveillance. Then we learned that the FBI
21 agent reviewing documents for production missed lots of documents. On the last day of
22 the evidentiary hearing we learned the Government had again failed to disclose required
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1 statements of a testifying Government agent.

2 Because the evidentiary hearing was limited in scope there was no document that
3 addressed the most recent items, like the information from the Goldberg case,
4 demonstrating the collective impact of these untimely disclosures. As the Declaration of
5 Mr. Maynard made clear, he was addressing only those matters disclosed since his first
6 declaration. That is what the post-hearing memorandum sought to do, and it was hardly
7 the defense's fault that it was a lengthy piece.
8

9 RESPECTFULLY SUBMITTED this 6th day of December 2019.
10

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants:

AUSA Joseph E. Koehler and AUSA Kristen Brook

Additionally, a copy was served upon Mr. Abdul Kareem by first class letter, postage prepaid, at:

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